



MANITOBA

LAW REFORM COMMISSION
COMMISSION DE RÉFORME DU DROIT

REPORT

ON

THE ADVISABILITY OF A GOOD SAMARITAN LAW IN MANITOBA

Report #11

March 8th, 1973

The Manitoba Law Reform Commission was established by "*The Law Reform Commission Act*" in 1970 and began functioning in 1971.

The Commissioners are:

Francis C. Muldoon, Q.C., *Chairman*

R. Dale Gibson

C. Myrna Bowman

Robert G. Smethurst, Q.C.

Val Werier

Sybil Shack

Kenneth R. Hanly

Professor John M. Sharp is Chief Research Officer to the Commission. The Secretary of the Commission is Miss Suzanne Pelletier.

The Commission offices are located at 331 Law Courts Building, Winnipeg, Manitoba R3C 0V8.

The subject of this Report is the consideration of enacting a so-called "Good Samaritan" law in Manitoba.

In June, 1972, the Honourable A.H. Mackling, Q.C., Attorney-General of Manitoba referred us to *The Emergency Medical Aid Act* of Alberta, in these terms:

"I would recommend that the Law Reform Commission in Manitoba consider this legislation to determine its effectiveness and whether similar legislation would be of benefit in Manitoba."

The essence of the Alberta statute is contained in its third section as follows:

Where, in respect of a person who is ill, injured or unconscious as the result of an accident or other emergency,

- (a) a physician or registered nurse voluntarily and without expectation of compensation or reward renders emergency medical services or first aid assistance and the services or assistance are not rendered at a hospital or other place having adequate medical facilities and equipment, or*
- (b) a person other than a person mentioned in clause (a) voluntarily renders emergency first aid assistance and that assistance is rendered at the immediate scene of the accident or emergency,*

the physician, registered nurse or other person is not liable for damages for injuries to or the death of that person alleged to have been caused by an act or omission on his part in rendering the medical services or first aid assistance, unless it is established that the injuries or death were caused by gross negligence on his part.

In considering this legislation we first of all naturally sought the opinions of those classes of persons who seem primarily to be protected by it. So it was that we canvassed the views of physicians, nurses, police associations and officials, firefighters, first-aiders and ambulance services. In all, twenty-five invitations to comment were issued by us. A list of all those who responded is Appendix "A" to this Report.

PHYSICIANS

In 1970 the Ontario Law Reform Commission considered whether a statute formulated along the lines of *The Emergency Medical Aid Act* which we are now considering, would serve a useful purpose in Ontario. That Commission contacted, as we have done, The Canadian Medical Protective Association. The Association is a mutual medical defence union which

doctors join voluntarily in order to make a number of services available to the membership. Through its solicitors in Winnipeg, this Association expressed to us the same opinion which it had earlier rendered to the Ontario Law Reform Commission.

The Canadian Medical Protective Association, in its response, considered and dealt with a comprehensive variety of factors and points of contention upon which it based its ultimate opposition to the enactment of such legislation. We think it worth repeating the Association's summation of these factors and points, as communicated to us in July, 1972.

Taking then these points in reverse order, the great but undue influence of American medico-legal literature on Canadian doctors; that no action even against an American doctor has ever reached a court of record in the United States; and that this Association knows of not even a threat against a Canadian doctor let alone a court action, this Association feels that "Good Samaritan" legislation is wholly unnecessary in Canada.

The Association thinks one other important point adds weight to its opinion that there is no necessity in Canada for such legislation. The medical profession in Canada, at least as far as its opinion can be known by this Association, recognizes that Canadian courts are fair and impartial and realistic in their approach to and their judgments about malpractice claims. It is almost inconceivable, to make an example, that a Canadian court would hold a doctor responsible for rendering in a water-filled ditch at the side of the road the meticulous technical service that the same doctor could provide, and would be expected to provide, in the operating room of an ordinarily equipped hospital. It is highly likely, indeed almost certain, that a Canadian court would judge the services rendered by the doctor in terms of the circumstances under which he rendered them. Had the doctor's services, in the light of the training and ability he possessed and in the circumstances under which he had to work, been ordinarily competent it is hard to think a Canadian court would find him guilty of professional malpractice or negligence simply because those services could not be as precisely applicable and as delicately applied as they would have been under ideal circumstances.

This Association does not believe "there is a real need for legislation to limit the liability of medically trained persons in such circumstances" and does not believe "the public good would be served by it". The Association opposes the enactment of such legislation.

The above quotation is from a letter dated May 21st, 1970 and addressed to the Ontario Law Reform Commission, which the Medical Protective Association conveyed to us, saying that "the view set forth in the enclosed letter remains the view of the Association."

The view of The College of Physicians and Surgeons of Manitoba was expressed to us as being that there is "no apparent need for such legislation for Manitoba."

Likewise, the Manitoba Medical Association could "find no reasons to support the need for such legislation in this province."

REGISTERED NURSES

In addition to physicians, registered nurses comprise the other class of persons mentioned specifically in the legislation under consideration. The Manitoba Association of Registered Nurses, after studying the matter, expressed its opinion to us by means of a resolution unanimously adopted by its Board of Directors, as follows:

"that we see no need to pursue the proposal of developing an Emergency Medical Aid Act for Manitoba."

PERSONS OTHER THAN PHYSICIANS AND REGISTERED NURSES

The Alberta statute which serves as a model or example for our consideration divides those who might provide emergency aid to the ill and injured into two categories: (i) physicians and registered nurses acting voluntarily and without expectation of compensation or reward; and (ii) any other person voluntarily rendering first aid at the immediate scene of the incident. It probably makes this distinction, we think, because likely only doctors and registered nurses are by law entitled to exact compensation or reward for rendering medical services or emergency assistance in Alberta. As noted, we canvassed the opinions of some of those others who would likely be actually in a position to render assistance at an accident or other emergency. We were informed that at the annual provincial meeting of the Manitoba Association of Licensed Practical Nurses, held in October, 1972, "all members present voted that the *Emergency Medical Aid Act* was not necessary in Manitoba."

Responses received from those police departments which did reply, and from the Winnipeg Police Association, were varied, with negative or "nearly negative" opinions predominating. By way of example, one might cite the thoughtful response of the Winnipeg Police Association. The Association's Executive stated "that police officers in this area have not experienced any problems to date with any lawsuits as a result of rendering emergency medical aid" but opined

"that some such legislation may be required if our members face civil litigation in the future because of rendering emergency medical aid and attempts are made to hold the police officer liable for damages arising out of injury or death to the individual assisted."

None of the police departments which responded had learned of any incident of a policeman being held liable, or even having been sued as a result of administering emergency first aid and assistance to injured victims of accidents. Two police departments perceived and pointed out to us a danger implicit in this kind of legislation. They asserted that first aid ought not to be attempted by an untrained person no matter how well-meaning he or she may be. Constables often have to restrain volunteers who want to move an injured person to 'make him more comfortable'. Therefore, it was suggested, that to the extent that such legislation would encourage well-meaning but clumsy or excited, untrained volunteers to perform their ministrations to the ill or injured, it could produce tragically counter-productive results. It was further suggested, as can be easily foreseen, that even among police constables the extent of training, experience and maturity is not always uniform. These correspondents suggested that the publicity which the discussion and enactment of a "Good Samaritan" statute would attract, could well encourage kindly but untrained persons to accord inappropriate or dangerous treatment to the ill and injured.

By contrast, it was suggested that generally the trained first-aiders need no statutory encouragement to perform their services. Indeed, the theme is evident in our correspondence from police organizations that the concept of *voluntarily* rendering assistance is not entirely appropriate to policemen. They may be voluntarily rendering assistance insofar as they are not specifically hired or retained by the particular accident victim; but insofar as their oath, terms of employment and departmental regulations are concerned they regard it as their *duty* to render emergency first aid assistance. It appears to be a duty willingly borne, but some of our police correspondents questioned whether or not a statute expressed in the terms of the Alberta legislation would strictly apply to those who are by duty bound to render emergency first aid assistance.

On the other hand, if the provisions of such a statute do apply to police and firefighters, another of our police correspondents questioned the provision which confines the intended legal protection to assistance rendered at the immediate scene of the accident or emergency. Our correspondent noted that the police department and fire department of that particular community operate their own ambulances and rescue waggons.

Not all of our police correspondents expressed negative or indifferent opinions of legislation of the type enacted in Alberta. One opinion which staunchly supported the concept was expressed as follows:

"The Act in itself is a good one as it protects persons who act voluntarily and do so without expectation of compensation or reward but I feel that the wording at the last of the Act reading, 'unless it is established that the injuries or death were caused by gross negligence on his part,' could be left out entirely."

Another favourable view was expressed by The Winnipeg Fire Fighters Association — the only group of its kind with whom we corresponded. This Association, which is affiliated with the Manitoba Professional Fire Fighters Association, gave considerable thought to the question of having a "Good Samaritan" statute in Manitoba. On January 31st, 1973 its President wrote to us to say:

"On this date the subject of your letter, an Emergency Medical Aid Act was placed before two meetings of our membership and the result was a unanimous decision in favour of obtaining this kind of legislation.

The members of the fire service are often in the position of having to make on the spot decisions pertaining to the saving of life in the course of their duties, consequently we have often discussed the reaction of relatives and others after the patient has been removed to a proper place of treatment. We are the first to admit that there is a lot of training taken for the unknown situation, but when some situations arise training for the 'ideal' is basic compared for the actual work performed in an emergency."

A balanced view, which indicated neither strong support nor strong opposition, was expressed by the Executive Committee of the St. John Ambulance Council for Manitoba. Its president reported to us the following:

"The question of Emergency Medical Aid Legislation was discussed at a recent meeting of the Executive Committee of the St. John Ambulance Council for Manitoba.

Members of the Committee expressed differing opinions and we were unable to formulate a clear-cut recommendation. However, it appeared there was a very small majority in favour of supporting such legislation. However, there was no general opinion that such legislation is an imperative need.

The persons about whom our organization would be most concerned would be those mentioned in Clause (b) of Section 3, since a good deal of our work is in the area of first aid training and the actual rendering of first aid in emergency situations.

As far as we know, there have been no instances of such persons being faced with a claim or being held liable to an accident victim in relation to emergency first aid assistance. However, one must concede that the possibility does exist and for this reason, St. John National Headquarters carries fairly comprehensive liability insurance.

. . .

Based upon a recent survey of the situation across Canada, St. John National Headquarters has communicated to us this comment:—

'From what I can find on record at Priory there appears to be considerable feeling on the part of knowledgeable persons that 'Good Samaritan' laws while perhaps affording to good samaritans a comfortable feeling of security are not really necessary.'

Having regard to the fundamental St. John rule that first-aiders must not undertake to do anything that is not actually necessary, this comment from our Headquarters probably reflects the general view."

CONSIDERATION OF THE QUESTION AND THE RESPONSES

We have set out in some detail the tenor and, in a few instances, the actual expression of the responses of those persons and organizations who would be closely affected (if at all) by a "Good Samaritan" law, because we believe that such detail reveals two salient conclusions: (i) there is no strong, general support for it from those identifiable classes of persons whom such a law purports to protect; and (ii) no cases indicating any existing need for such a law are known to these classes of persons.

We were privileged recently to receive an opinion from Dean Wilbur F. Bowker, Q.C., Director of The Alberta Institute of Law Research and Reform on this subject. He said:

"In my opinion there was and is no need for this Act.

. . . .

Alberta's Act is borrowed from one of the varieties of good samaritan laws that have been passed in many of the United States. In that country the fear of law suits seems to have deterred physicians and others from stopping to render help. In my opinion any fear of such law suits in Canada is unfounded. The 'patient' would never think of bringing action and if he did it would fail. One reason is that we do not normally have juries in malpractice claims. Another is that the contingent fee, although permitted in some provinces including Alberta, has not operated as a factor to encourage unfounded claims and attempts to obtain inflated damages. I have never heard of a claim being brought against the good samaritan in Canada. I think I have read every reported case and have discussed the subject with many physicians. It is true that some of them fear that the American situation will spill over into Canada but I have tried to show that conditions are different in the two countries and that there is no likelihood of this happening. A statute like Alberta's will make no difference in the conduct of passers by. It uses gross negligence as the criterion of liability. The courts' experience with this concept in snow and ice cases and gratuitous passenger cases is not such as to recommend

its extension to malpractice cases. The comments I have read on the American statutes have been generally adverse, and even if this opinion is wrong, those statutes are designed to remedy a problem that does not exist in Canada.

I spoke today to the registrar of the Alberta Medical Association. He has never heard of an instance in which the Act has been even mentioned. I did not ask him his opinion of the Act, though just after it was passed I asked one of our leaders in practice and medical education his opinion and he said he disagreed with the Act on the ground that it might encourage actions by reminding 'patients' of the possibility of a claim."

No doubt the particular criticisms of the express provisions of the Alberta legislation could be accommodated if such a statute were to be enacted in Manitoba.

For example, the concept of *gross* negligence has bedevilled the judiciary, the litigants and the legal profession so consistently in highway traffic accident cases that one would hesitate to introduce it into any new legislation.

As mentioned, the Ontario Law Reform Commission considered the advisability of emergency medical aid legislation in 1970. That Commission, in its 1971 Annual Report (p. 13) concluded:

"45. As a result of representations made to it, the Commission initiated a study of emergency medical aid and tort liability. Concern was expressed that medical and paramedical personnel rendering assistance and treatment to injured people might be held liable for acts undertaken to relieve suffering. Questions were also raised as to clarifying the standard of care required of those rendering emergency medical aid and whether reasonable immunity from lawsuits should be afforded in appropriate cases, in order to encourage competent people to assist at accidents.

46. In its Fourth Annual Report, the Commission stated that 'there would appear to be no case made, on the data available, for legislative intervention'. After having given this matter our further fullest consideration, we have concluded that change in the law is neither necessary nor desirable, and as a result we have completed our work on this project."

We conclude, therefore, that such a statute is not shown to be needed for anyone's protection in Manitoba and cannot be demonstrated to provide any public benefit at this time. Two conditions would surely have to be exhibited before a "Good Samaritan" law could be shown to produce a benefit or suppress an evil. Firstly, there would have to be such a spate of lawsuits against doctors, nurses, policemen, firemen and others that they would begin to become overly wary about rendering emergency assistance.

Secondly those lawsuits would have to be decided so consistently in favour of the plaintiffs that the public and the government would become convinced that many were wrongly decided or that the law exacted too high a standard of performance and care. Such a result — if ever it transpired — would clearly be detrimental to the public interest. If such a result ever transpired! This is no solid supposition. It rather seems, from our observations, to consist of an overly-anxious, overly-fearful conjecture.

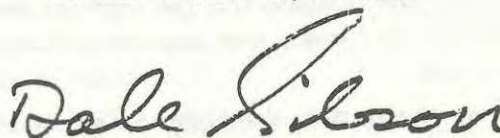
We therefore recommend that no "Good Samaritan" statute be enacted in Manitoba now, or in the "foreseeable" future.

This is a Report pursuant to Section 5(3) of "*The Law Reform Commission Act*".

Dated this 8th day of March, 1973.



Francis C. Muldoon, Chairman



R. Dale Gibson, Commissioner




C. Myrna Bowman, Commissioner



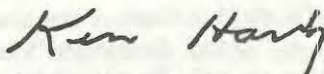
R.G. Smethurst, Commissioner



Val Werier, Commissioner



Sybil Shack, Commissioner



Kenneth R. Hanly, Commissioner

APPENDIX "A"

**LIST OF ASSOCIATIONS AND ORGANIZATIONS WHICH
RESPONDED TO OUR INQUIRIES**

Manitoba Association of Licensed Practical Nurses
Manitoba Association of Registered Nurses
The Canadian Medical Protective Association
East Kildonan Community Police Department
St. James-Assiniboia Community Police Department
St. Boniface Police Department
Fort Garry Police Department
St. Vital Community Police Department
Manitoba Medical Association
The College of Physicians and Surgeons of Manitoba
Winnipeg Police Association
St. John Ambulance (Manitoba Provincial Headquarters)
The Winnipeg Fire Fighters Association